

frontier

180 South Clinton
Rochester, NY 14646

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: CC Docket No. 94-129

Dear Mr. Caton:

Enclosed for filing please find an original plus nine (9) copies of the Comments of Frontier Communications International Inc. in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

Michael J. Shortley, III

cc: International Transcription Service

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

JAN 9 1995

In the Matter of

**Policies and Rules Concerning
Unauthorized Changes of
Consumers' Long Distance Carriers**

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CC Docket No. 94-129

**COMMENTS OF FRONTIER
COMMUNICATIONS INTERNATIONAL INC.**

Frontier Communications International Inc. ("Frontier")¹ submits these comments in response to the Commission's Notice initiating, on its own motion, this proceeding.² The Commission correctly recognizes that unauthorized changes of a customer's presubscribed interexchange carrier ("PIC") continues to present a serious problem, despite the steps that the Commission has taken to correct such abuses.³

Frontier does not object to the proposal to delineate what may -- and may not -- be included on a letter of authorization ("LOA").⁴ However, the Commission should recognize that its proposed solution: (a) will not be entirely successful in eliminating such marketing

¹ Frontier was formerly known as RCI Long Distance, Inc., the principal long distance subsidiary of Frontier Corporation, which itself was formerly known as Rochester Telephone Corporation.

² *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Dkt. 94-129, Notice of Proposed Rulemaking, FCC 94-292 (Nov. 10, 1994) ("Notice").

³ See, e.g., *Policies and Rules Concerning Changing Long Distance Carriers*, CC Dkt. 91-64, Report and Order, 7 FCC Rcd. 1038 (1992), *recon. denied*, 8 FCC Rcd. 3215 (1993).

⁴ Notice, ¶¶ 10-13.

Frontier notes that the Commission is not -- as it could not under the First Amendment -- proposing to preclude the inclusion of the LOA in a package containing otherwise truthful and non-deceptive marketing materials. The Commission is simply proposing to require that the LOA be a separate, stand-alone document unambiguously authorizing the interexchange carrier to submit a PIC change order to the affected exchange carrier.

abuses; (b) will penalize interexchange carriers that do not engage in unscrupulous and deceptive marketing practices; and (c) is inferior to another alternative readily available to the Commission – permitting exchange carriers to tariff relatively high unauthorized PIC change charges.

The Commission currently does not require – nor should it – the use of an LOA as the sole means for an interexchange carrier to demonstrate that a consumer has authorized a PIC change, even for orders generated through telemarketing campaigns.⁵ Thus, to the extent that the Commission adopts more stringent requirements governing the content of an LOA, its actions may simply invite unscrupulous operators to utilize other methods of supposedly verifying PIC change orders.⁶

In addition, the Commission should recognize that, because its proposed rules will affect all interexchange carriers – honest and unscrupulous alike – the proposed changes will impose costs on all. If adopted, the proposed rules may require interexchange carriers that abide by the rules to change promotional literature that is not deceptive in order to comply, although those carriers – such as Frontier – are not the target of the Commission's

⁵ *Id.*, ¶ 5.

⁶ The Commission's proposed prohibition of the "negative option" LOA may mitigate this concern. *See id.*, ¶ 11. The proposed rule appears, however, to create an ambiguity under which the "information package" option for telemarketing-generated sales – which requires the inclusion of a postcard that a consumer has the *option* of returning it (*see id.*) – may not be considered a "negative option" LOA. At a minimum, the Commission should modify its existing rules to declare that while, in fact, the postcard is not a "negative option" LOA, it must also be free of all promotional or inducement-oriented language.

justifiable wrath.⁷ As the Commission well knows, however, unscrupulous operators will continue to attempt to find ways to evade both the letter and the spirit of the Commission's regulations.⁸ Although the Commission's proposed rules are imperfect at best, Frontier does not object to their adoption.

Frontier, however, strongly urges the Commission to take one step that is conspicuously absent from the Notice -- namely, permitting exchange carriers to tariff a stiff charge to deter unauthorized PIC changes. An economic penalty is far more likely to deter such unscrupulous conduct than are administrative regulations defining the form and content of an LOA. The New York Public Service Commission recognized this in its order authorizing intraLATA presubscription within the state. It authorized exchange carriers to assess, against the offending interexchange carrier, a non-cost-based one hundred dollar per line charge for an unauthorized PIC change.⁹

⁷ To avoid imposing additional costs upon interexchange carriers that abide by the rules, the Commission should not prescribe the precise form or content of the LOA. Rather, it should establish minimum requirements and permit interexchange carriers to fashion LOAs that comply with these minimum requirements. This may permit those carriers that comply with the rules to redesign their existing LOAs with minimal expense. At the same time, those carriers that currently engage in the practices condemned by the Commission will need to make wholesale revisions to the LOAs that they currently utilize.

⁸ For this reason, Frontier supports the Commission's proposal that only the carrier -- reseller or otherwise -- that actually sets the rates for end users be permitted to designate its name as the customer's PIC unless the underlying, facilities-based carrier otherwise consents. See *id.*, ¶ 14. More often than not, the underlying carrier has no direct contact or relationship with the end user and should not be held culpable for actions of third parties over which it has no control and about which it may have no knowledge.

⁹ Case 28425, *Proceeding on Motion of the Commission as to the Impact of the Modification of Final Judgment and the Federal Communications Commission's Docket 78-72 on the Provision of Toll Service in New York State*, Opinion No. 94-11, Opinion and Order Concerning IntraLATA Presubscription at 50-51 (April 4, 1994).

This Commission should adopt this approach. If an interexchange carrier could not demonstrate, under applicable Commission rules, that it had obtained the customer's consent to process a PIC change order, it would be liable for this charge. This type of charge would provide a powerful incentive for unscrupulous operators to comply with the law and applicable Commission regulations.¹⁰ The Commission could achieve its goal of minimizing unauthorized PIC changes far more effectively by adopting this proposal than it could by adopting any of the proposals or suggestions contained in the Notice.¹¹

¹⁰ In addition, the Commission should emphasize that the full panoply of its enforcement mechanisms -- including its forfeiture authority -- would continue to apply to such violations.

¹¹ By permitting exchange carriers to tariff such a charge, the Commission could achieve certain collateral benefits as well. For example, Frontier currently has pending a formal complaint against NYNEX and Bell Atlantic that challenges those companies' unilateral efforts to control unauthorized PIC changes from their payphones by unreasonably interjecting themselves into the business relationships between an interexchange carrier and its end user customers. See *RCI long Distance, Inc. (now Frontier) v. New York Telephone Company, et. al.*, ENF File Nos. 94-69, *et. al.*, Formal Complaint, ¶ 9 (filed June 20, 1994). The actions of NYNEX and Bell Atlantic would be unnecessary if a substantial, economic deterrent to unauthorized PIC changes existed.

For the foregoing reasons, the Commission should delineate, only in broad terms, the content of an LOA. More importantly, the Commission should also permit exchange carriers to tariff a one hundred dollar per line unauthorized PIC change charge to be assessed against an interexchange carrier that cannot demonstrate, in accordance with the Commission's rules and regulations, that the affected customer authorized the PIC change.

Respectfully submitted,



Michael J. Shortley, III

Attorney for Frontier Communications
International Inc.

180 South Clinton Avenue
Rochester, New York 14646
(716) 777-1028

January 6, 1995